

**REMARKS**

Claims 1-32 and 34-40 are currently pending in the subject application, and are presently under consideration. Claims 1-27 and 34-40 are allowed. Claims 28, 29, 31 and 32 are rejected. Claim 30 has been indicated as allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 30 and 32 have been amended and claims 28-29 and 31 have been cancelled.

Favorable reconsideration of the application is requested in view of the amendments and comments herein.

**I. Rejection of Claims 28, 29, 31 and 32 Under 35 U.S.C. §102(b)**

Claims 28, 29, 31 and 32 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,640,679 to Lundqvist et al. ("Lundqvist"). The rejection of claims 28, 29 and 31 is moot in view of the cancellation of these claims.

Claim 32 has been amended to correct an inadvertent error in claim dependency. In particular, claim 32 has been amended to depend from claim 30 as to provide proper antecedent basis for the term "the contingent BTS" in claim 32. This element is introduced in claim 30, not claim 31 from which claim 32 originally depended. Since claim 30 was indicated as being allowable and is now written in independent form (including the limitations of its base claim 30), claim 32 is also allowable.

Additionally, regarding claim 32, the Office Action asserts that Lundqvist anticipates claim 32. We respectfully disagree with this contention. For example, Lundqvist fails to teach or suggest means for removing a contingent carrier after establishing a contingent Base Station Terminal (BTS) and mobile unit. Instead, Lundqvist discloses a mobile station receives a hand off command and switches to a new carrier frequency. See Lundqvist Fig. 5. That is, Lundqvist does not teach the any structure or function of removing a contingent carrier in the manner recited in claim 32. This deficiency in Lundqvist results from the fact that Lundqvist fails to teach using a contingent carrier, as recited in claim 30 from which claim 32 depends, such that

there would be no mechanism in Lundqvist to remove a contingent carrier. Accordingly, Lundqvist fails to anticipate claim 32.

For the reasons described above, claim 32 is patentable over the cited art. Accordingly, withdrawal of this rejection is respectfully requested.

**II. Objection to Claim 30.**

The Office Action states that claim 30 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has rewritten claim 30 in independent form including all of the limitations of the base claim 30, as suggested in the Office Action. Thus amended claim 30 is in condition for allowance. Accordingly, Applicant respectfully requests that the objection to claim 30 be withdrawn.

**CONCLUSION**

In view of the foregoing remarks, Applicant respectfully submits that the present application is in condition for allowance. Applicant respectfully requests reconsideration of this application and that the application be passed to issue.

If the Examiner has any questions or if the Applicant or its representative can be of any assistance in connection with prosecution of this application, the Examiner is invited and encouraged to contact the undersigned at the number identified below.

There should be no additional fees due for rewriting claim 30 in independent form in view of the cancellation of independent claim 28. However, please charge any deficiency or credit any overpayment in the fees for this amendment to our Deposit Account No. 20-0090.

Respectfully submitted,



Gary J. Pitzer  
Registration No. 39,334

**CUSTOMER NO.: 26,294**

TAROLLI, SUNDHEIM, COVELL, & TUMMINO L.L.P.  
1300 EAST NINTH STREET, SUITE 1700  
CLEVELAND, OHIO 44114  
Phone: (216) 621-2234  
Fax: (216) 621-4072